

REMARKS

In the Office Action, Claims 1-11 were rejected as follows. Claim 1 was rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,035,183 to Todd et al.; Claim 2 was rejected under 35 U.S.C. § 103(a) as unpatentable over Todd et al. in view of PCT Publication WO 02/031992 A2 by Yang (herein “Yang PCT German publication”) and further in view of U.S. Patent Publication No. 2004/0053592 by Reial; Claims 3-7, 9 and 11 were rejected under 35 U.S.C. § 103(a) as unpatentable over Todd et al. in view of the Yang PCT German publication; and Claims 8 and 10 were rejected under 35 U.S.C. § 103(a) as unpatentable over Todd et al. in view of U.S. Patent Publication No. 2004/0038650 by Yang (herein the U.S. Yang Publication) and further in view of U.S. Patent Publication No. 2005/0033126 by Charash.

As a threshold matter, applicant(s)’ representative contacted the Examiner in regard to the citation to the Yang PCT German publication. The Examiner confirmed that the citation to “Yang (PCT Publication #2004/0038650)” at pages 5 and 6 of the Office Action, as well as the citation at page 8 to “Yang (U.S. Application #2004/0038650)”, are incorrect. The Examiner requested that this response confirm that the citation that was intended on these pages of the Office Action is PCT Publication WO 02/031992 A2.

The Examiner, however, was unable to discuss why he believes it is appropriate to cite a non-English language document as prior art under 35 U.S.C. § 102(e), as discussed in detail below.

In this amendment, Claim 1 has been cancelled and Claim 2 amended to include the recitations of Claim 1, from which Claim 2 formerly depended.

No new subject matter is presented.

Claim 2, which is now the only pending independent claim, was rejected as unpatentable under 35 U.S.C. § 102(e) over a combination of Todd et al., the Yang PCT German publication and Reial. However, the Yang PCT German publication is not prior art. Accordingly, Claim 2 is in condition for allowance.

35 U.S.C. § 102(e) requires that an international application, such as the cited Yang PCT German publication, be published “in the English language.” Without satisfying this requirement, the publication is not prior art. Specifically, 35 U.S.C. § 102(e) reads

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for the purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language;

The one-page cover sheet from WO/ 02/031992 A3 that the Examiner provided with the Office Action as the Yang PTC German publication clearly indicates that the publication language was “Deutsch” and not English. Accordingly, the cited Yang PCT German publication, like the U.S. Yang Publication, is not prior art to the pending application and does not anticipate or render obvious Claims 2-11 under 35 U.S.C. §102(e) or under 35 U.S.C. §103(a), respectively.

Also in the Office Action it was alleged that “Yang discloses a calculation that adds the signal strength (read as RSSI) averages (read as summing N number of RSSI_AVR values obtained by the execution of step e and determining the sum of the RSSI-AVR values as an analysis result of the RSSI values for the predetermined time T; see abstract).” (Office Action, top of page 6.) However, the translation of the Abstract that appears at field numbered “(57)” of the one-page cover sheet from WO 02/031992 A3 that the Examiner provided fails to include

such disclosure, and it is impermissible hindsight analysis for the Examiner to utilize any disclosure from the subsequent U.S. Yang Publication in regard to the cited Yang PCT German publication.

Accordingly, the rejection of Claim 2 must be withdrawn. Claims 3-11, which depend from Claim 2, are in condition for allowance at least in view of their dependency from Claim 2.

In view of the above, all of the pending claims, i.e. Claims 2-11, are believed to be in condition for allowance. If a telephone conference or personal interview would facilitate resolution of any remaining matters, it is requested that the Examiner contact applicant(s) attorney at the number provided below.

Respectfully submitted,



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